

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 TOM GREENE  
Chief Assistant Attorney General  
3 THEODORA BERGER  
Senior Assistant Attorney General  
4 SALLY KNOX  
Supervising Deputy Attorney General  
5 CHRISTOPHER CROOK (S.B. # 50339)  
KIRK McINNIS (S.B. # 130952)  
6 TIMOTHY E. SULLIVAN (S.B. # 197054)  
Deputy Attorneys General  
7 1515 Clay Street, 20<sup>th</sup> Floor  
P.O. Box 70550  
8 Oakland, CA 94612-0550  
Telephone: (510) 622-4038  
9 Fax: (510) 622-2270  
Email: Timothy.Sullivan@doj.ca.gov  
10 Attorneys for Plaintiff California Department of Toxic  
Substances Control  
11

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA  
14

15  
16 **CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL,**

17 Plaintiff,

18 v.

19 **PAYLESS CLEANERS, et al.,**

20 Defendants.  
21

Civ.S-02-2389 LKK DAD

**SETTLEMENT AGREEMENT  
AND CONSENT DECREE  
BETWEEN DTSC AND  
CALIFORNIA WATER  
SERVICE COMPANY**

22 **INTRODUCTION**

23 Plaintiff, the California Department of Toxic Substances Control (“DTSC”), filed a  
24 second amended complaint on December 8, 2004, (the “Complaint”) in the United States District  
25 Court for the Eastern District of California (the “Court”), pursuant to the Comprehensive  
26 Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 et  
27 seq., and California state law governing release of hazardous substances and nuisance.

28 The Court, on the motion and with the consent of DTSC and California Water Service



Company, Inc. ("Cal Water"), hereby ORDERS, ADJUDGES, AND DECREES as follows:

**1. DEFINITIONS**

A. All terms used in this Consent Decree that are defined in section 101 of CERCLA, 42 U.S.C. § 9601, shall have the same meaning set forth in that section.

B. "DTSC," as used in this Consent Decree, shall mean DTSC, its predecessors including, but not limited to, the Toxic Substances Control Program of the State of California Department of Health Services, and its successors.

C. "Southwest Chico Plume" means both the soil and groundwater existing in the shallow, intermediate, and/or lower aquifers underlying the city of Chico south of Big Chico Creek that are contaminated with perchloroethylene (including its breakdown products), the area of which is roughly represented by Figure 2 of the "Groundwater Monitoring Report, Third Quarter 2006, Chico Southwest Plume, Chico, California," dated October 20, 2006 (attached hereto as Exhibit A and incorporated herein by this reference), and all locations where such contaminants may come to be located.

D. "Response Costs," as used in this Consent Decree, shall include all costs of any type or character whatsoever, including but not limited to costs related to "removal," "remedial action," or "response" (as those terms are defined by section 101 of CERCLA), incurred or to be incurred by DTSC in response to the release or threatened release of hazardous substances at, in, or from the Southwest Chico Plume. Said term shall include, but not be limited to, direct labor costs; contractor, consultant and expert costs; travel and any other out-of-pocket expenses; the costs of identifying, developing evidence against, and pursuing claims against persons or entities liable for the release or threatened release of hazardous substances at, in, or from the Southwest Chico Plume; indirect costs; oversight costs; applicable interest charges; and attorneys' fees.

E. "Remedial Action Plan," as used in this Consent Decree, shall mean a remedial action plan prepared to address the release or threatened release of hazardous substances at, in, or from the Southwest Chico Plume and finally approved by DTSC as described in California Health and Safety Code section 25356.1, and also includes any amendments to the remedial action plan that are subsequently approved by DTSC.



1 F. “Potential Remedy” means a remedial action to address contamination at, in, or  
2 from the Chico Southwest Plume that includes the following measures: (1) The pumping and  
3 treatment of water from up to three wells: one existing well, known as CWS-46; and one or two  
4 new wells to be installed in the Chico Southwest Plume to the southwest of CWS-46 (hereinafter  
5 referred to as “Future Well A” and “Future Well B”); (2) Periodic monitoring of groundwater  
6 from numerous groundwater monitoring wells previously installed or to be installed; and (3)  
7 Continuation of the above activities for a period of at least 30 years or until contaminants of concern  
8 are no longer detected.

9 G. “Future Remedial Extraction Wells” means the one or two new wells that, depending  
10 on the requirements of the Remedial Action Plan, may be installed in the Chico Southwest Plume to  
11 the southwest of CWS-46, which are referred to herein as Future Well A and Future Well B, or any  
12 wells constructed to replace those wells.

13 H. “Future Treatment System” means a granular activated carbon filtration system  
14 intended to remove perchloroethylene from the Future Remedial Extraction Wells, if such a system  
15 is required by the Remedial Action Plan, or any future treatment device that replaces the system and  
16 serves the same purpose in the Remedial Action Plan. The Future Treatment System is expected to  
17 include two granular activated carbon filtration units (2,000 to 6,000 pounds each) operated in series  
18 that are designed to treat to drinking water standards approximately 100 gallons per minute of water.

19 I. “Central Plume Wells” means wells anticipated to be pumped as part of a remedial  
20 action plan for the Chico Central Plume groundwater remediation that have been designated as  
21 CMW-101B, CMW-117B, CEW-1, CMW-118B, and CMW-119B (or any wells constructed to  
22 replace those wells) and also wells owned by Cal Water known as CWS-21 and CWS-8. Except as  
23 otherwise explained herein, Cal Water’s obligations with respect to the Central Plume Wells are  
24 contained in a separate Consent Decree and Settlement Agreement between DTSC and Cal Water  
25 settling the Central Plume litigation (*California Department of Toxic Substances Control v. City of*  
26 *Chico, et al.* [U.S. District Court, Eastern District of California, Case No. Civ.S-02-0442 LKK  
27 DAD]); that Consent Decree and Settlement Agreement was approved by the Court and entered on  
28 May 23, 2007.



1 J. "Effective Date" is the day on which this Consent Decree is entered as an order of  
2 the Court.

3 **2. RECITALS**

4 A. DTSC is the California state agency with primary jurisdiction over the response to  
5 the release and threatened release of hazardous substances at, in, or from the Southwest Chico  
6 Plume.

7 B. DTSC seeks to recover from all defendants named in the Complaint, including but  
8 not limited to Cal Water, jointly and severally, all costs it has incurred in response to releases and/or  
9 threatened releases of hazardous substances at, in, or from the Southwest Chico Plume, pursuant to  
10 section 107(a) of CERCLA. DTSC also seeks a declaratory judgment that all such defendants are  
11 jointly and severally liable for all additional costs incurred by DTSC in response to the releases  
12 and/or threatened releases of hazardous substances at, in, or from the Southwest Chico Plume  
13 pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. section 9613(g)(2). DTSC alleges that it will  
14 continue to incur Response Costs until the remedy selected in the Remedial Action Plan, and  
15 operation and maintenance of that remedy, is completed. DTSC also seeks injunctive relief to abate  
16 a public nuisance (California Health and Safety Code § 58009) and to abate an imminent or  
17 substantial endangerment to public health and safety or to the environment (California Health and  
18 Safety Code § 25358.3).

19 C. By entering into this Consent Decree, Cal Water expressly denies any liability  
20 whatsoever for any of the claims made in the Complaint and under any of the authorities stated in  
21 the Complaint, and makes no admission of liability. DTSC has not contended in this lawsuit that  
22 Cal Water was responsible for initially introducing any amount of perchloroethylene or any other  
23 contaminant into the groundwater or soils in the Southwest Chico Plume. DTSC acknowledges that  
24 Cal Water first identified the perchloroethylene problem in the Southwest Chico Plume pursuant to  
25 monitoring required under AB 1803 (ch. 881, Stats. 1983) and cooperated with authorities in  
26 investigating the problem.

27 D. Each of the parties to this Consent Decree represents and acknowledges that, in  
28 deciding whether to enter into this Consent Decree, it has not relied on any statement of fact,



statement of opinion, or representation, express or implied, made by any other party to this Consent Decree. Each of the parties to this Consent Decree has investigated the subject matter of this Consent Decree to the extent necessary to make a rational and informed decision to execute it, and has had the opportunity to consult independent counsel.

E. DTSC and Cal Water agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action. This Consent Decree was negotiated and executed by DTSC and Cal Water in good faith to avoid prolonged and complicated litigation. DTSC and Cal Water, moreover, have negotiated and executed this Consent Decree to further the public interest and to protect human health and the environment.

### **3. JURISDICTION**

This Court has jurisdiction over DTSC's federal law claims, which arise under CERCLA, pursuant to 28 U.S.C. section 1331 and 42 U.S.C. section 9613(b). This Court has jurisdiction over DTSC's state law claims under the supplemental jurisdiction provision of 28 U.S.C. section 1367(a) and under 28 U.S.C. section 2201, in that the state and federal claims arise from common facts relating to release of hazardous substances and remediation of or failure to remediate the resulting contamination. This Court has personal jurisdiction over each of the parties to this Consent Decree. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. section 1391(b) and 42 U.S.C. section 9613(b). This Court, further, has the authority to enter this Consent Decree as a consent decree of the Court.

### **4. SETTLEMENT OF DISPUTED CLAIMS**

4.1 This Consent Decree represents a fair, reasonable, and equitable settlement of the matters addressed herein.

4.2 For the purposes of this Consent Decree, Cal Water admits none of the allegations of the Complaint. Nothing in this Consent Decree shall be construed as an admission of any issue of law or fact or of any violation of law. Notwithstanding the foregoing, Cal Water acknowledges that it has agreed to perform certain acts and further acknowledges its responsibility pursuant to this Consent Decree to perform those acts it has agreed to undertake in this Consent Decree, and shall



1 not deny such responsibility in any proceeding brought by DTSC to enforce this Consent Decree.

2 4.3 Except as set forth in section 9 of this Consent Decree, nothing in this Consent  
3 Decree shall prejudice, waive, or impair any right, remedy or defense that Cal Water may have in  
4 any other or further legal proceeding.

5 **5. WORK TO BE PERFORMED BY CAL WATER**

6 In exchange for the covenant not to sue contained in this Consent Decree, Cal Water agrees  
7 to provide to DTSC the planning, engineering, design, construction, and equipment listed below  
8 in sections 5.1, 5.2, 5.3, and 5.4, for the purposes of implementing a remedial action to address  
9 releases of hazardous substances.

10 5.0 Recitals

11 5-A Cal Water currently owns and operates a well known as CWS-46, the  
12 water in which has been contaminated with perchloroethylene. Cal Water treats the water from  
13 this well and provides it to its water customers in the city of Chico pursuant to a permit issued by  
14 Department of Health Services ("DHS").

15 5-B. The Potential Remedy for the Southwest Chico Plume includes the pumping  
16 and treatment of water from up to three wells, known as Future Well A, Future Well B, and CWS-  
17 46. When construction of the Future Treatment System is completed, the Future Remedial  
18 Extraction Wells will be connected to the Future Treatment System; well CWS-46 has its own  
19 separate treatment unit. The location of well CWS-46 is shown on Exhibit A. The parties  
20 anticipate that Future Well A and Future Well B will be located to the southwest of CWS-46,  
21 north of Little Chico Creek.

22 5-C. As detailed below, Cal Water will retain contractors and design  
23 professionals to design and install certain capital improvements included in the Potential  
24 Remedy. Cal Water will provide for the construction of those specified capital improvements at  
25 its expense but subject to a cost cap discussed elsewhere herein. Any new extraction wells,  
26 including Future Well A and Future Well B, as well as any new monitoring wells, are excluded  
27 from the capital improvements to be designed and installed by Cal Water, except as otherwise  
28 specified in section 5.1(a)(7). Capital improvements related to site closure are also excluded



1 from the work to be performed by Cal Water.

2           5-D. As detailed below, Cal Water will provide certain operation and  
3 maintenance for the Potential Remedy at its expense over a 30 year period, or until DTSC has  
4 determined that the remediation is complete, whichever is earlier. Cal Water will provide labor  
5 and utilities at its own expense, but parts are excluded. Cal Water will perform at its own  
6 expense influent and effluent EPA standard 8260B or equivalent sampling and analysis once per  
7 month, or similar sampling as needed to meet DHS monitoring requirements, at each of the  
8 Remedial Extraction Wells, the Future Treatment System, and well CWS-46. Cal Water is not  
9 required by this Consent Decree to perform any sampling or analysis of groundwater monitoring  
10 wells, including, but not limited to, well purging, sample collection, analytical costs, data  
11 analysis, hazardous waste disposal fees, or temporary storage.

12           5-E. As of the signing of this Consent Decree, DTSC has not approved a  
13 remedy for the Southwest Chico Plume, nor has it approved a Remedial Action Plan. The  
14 amount, nature, and extent of work to be performed by Cal Water pursuant to this Consent  
15 Decree shall not be expanded due to any differences between the Potential Remedy and the  
16 remedy ultimately selected in the approved Remedial Action Plan.

17           5.1. Design and Construction of Remedial Measures.

18           (a) Cal Water will hire design professionals and contractors, as necessary, to  
19 complete the following elements of the Potential Remedy (excluding design and construction of  
20 Future Well A and Future Well B, and any new monitoring wells, except as otherwise specified  
21 in section 5.1(a)(7)), to be defined in the Remedial Design, at its own expense but subject to the  
22 Cost Cap described in section 5.1(b) below:

23                       (1) Planning for new construction necessary to implement the Potential  
24 Remedy as follows:

- 25                               (A) Designing the Future Treatment System;
- 26                               (B) Designing pipelines for transmission mains from the Future
- 27 Remedial Extraction Wells to the Future Treatment System and applicable station piping and
- 28



1 from the Future Treatment System to Cal Water's distribution system pursuant to specifications  
2 attached hereto as Exhibits B, C, D, and E;

3 (C) Coordinating activities among parties conducting work;

4 (D) Acquiring use permits, building permits, encroachment  
5 permits for work in rights of way, electrical permits, and DHS permit amendments, including  
6 preparation and submittal of applications for permits;

7 (E) Negotiation of access rights or agreements, if necessary, as  
8 an agent on behalf of DTSC when authorized in writing by DTSC to do so. Consideration,  
9 payments, costs or expenses, including attorney's fees, related to the acquisition of real  
10 property, eminent domain, licenses, leases, easements, construction easements, rights of entry or  
11 access rights shall not be borne by Cal Water.

12 (2) Designing the Potential Remedy as follows:

13 (A) Preparing construction drawings for pipeline design and  
14 Future Treatment System design;

15 (B) Preparing the electrical design for the operation of pumps and  
16 motor transporting water from the Future Remedial Extraction Wells to the Future Treatment  
17 System and from the Future Treatment System to Cal Water's distribution system;

18 (C) Preparing the concrete pad design to the requirements of the  
19 City of Chico Building Department standards;

20 (D) Preparing technical specifications for the pipelines, granular  
21 activated carbon units, and all electrical components to operate the fixtures;

22 (E) Selecting equipment for the pump and motors as well as  
23 electrical equipment directly in connection with the operation of the mechanical equipment;

24 (F) Preparation of bid packages, including a notice to bidders,  
25 newspaper publication (if necessary), special conditions, drawings and/or specifications, a non-  
26 collusion affidavit form, bid and/or performance bond forms and the terms and conditions for  
27 construction agreements, which shall be exclusively determined by Cal Water.



1 (3) Procuring and installing the granular activated carbon filtration  
2 units and associated piping that will make up the Future Treatment System, pursuant to  
3 specifications substantially similar to those attached hereto as Exhibit F. Cal Water will provide  
4 the initial supply of carbon filter media for the granular activated carbon filtration units, but Cal  
5 Water shall not be responsible for the cost of carbon filter media used to treat water passing  
6 through the Future Treatment System. Cal Water shall not be responsible for the cost of carbon  
7 filter media after the initial supply of said media.

8 (4) Procuring and installing underground conveyance pipelines  
9 between the Future Treatment System and each of the Future Remedial Extraction Wells and  
10 from the Future Treatment System to Cal Water's distribution system, including all labor and  
11 materials.

12 (5) Providing traffic controls during all phases of construction of the  
13 Future Treatment System, pipelines, and connections to the Future Treatment System necessary  
14 to implement the Potential Remedy.

15 (6) Supplying personnel to supervise and coordinate all phases of  
16 construction of the Future Treatment System, pipelines, and connections to the Future Treatment  
17 System as specified in the Remedial Design.

18 (7) Designing and installing controls for each of the Future Remedial  
19 Extraction Wells so that the wells will shut down when the pressure exceeds Cal Water's normal  
20 operating high-pressure limit in the water distribution system and restart when the pressure is  
21 below a minimum water system pressure setting. Cal Water will adjust these pressure settings to  
22 give each of the Future Remedial Extraction Wells the pumping priority that has been assigned  
23 to that well pursuant to the procedure in section 5.2(b).

24 (A) DTSC shall provide, at no cost to Cal Water, control  
25 equipment for each of the Future Remedial Extraction Wells so that the wells will shut down  
26 when the pressure exceeds Cal Water's normal operating high-pressure limit in the water  
27 distribution system and restart when the pressure is below a minimum water system pressure  
28 setting.



(8) Procuring and installing fencing at the site of the Future Remedial Extraction Wells and Future Treatment System and, as needed, installing or maintaining a paved driveway at those locations.

(9) Procuring and installing chlorination equipment, which shall consist of a double contained storage tank, diaphragm metering pump, chlorine analyzer, and chlorine equipment shed.

(b) Cost Cap

(1) If Cal Water spends more than \$600,000 (six hundred thousand dollars) to undertake the actions listed in section 5.1(a), and DTSC determines that additional actions listed in section 5.1(a) are necessary to the success of the Potential Remedy, DTSC and Cal Water will share the additional expenses equally until the total cost of actions listed in section 5.1(a) reaches \$800,000, after which time Cal Water will not be responsible for paying for additional actions listed in section 5.1(a).

(2) The \$600,000 amount described in section 5.1(b)(1) includes the following: Cal Water's actual expenses for the capital improvements described in Section 5.1(a) plus ten percent (10%) overhead on those capital improvements that are direct, non-contract costs to Cal Water; actual expenses for other materials necessary to implement the actions listed in Section 5.1(a); direct labor costs for time spent undertaking the actions listed in Section 5.1(a); and payments to contractors to implement the actions listed in Section 5.1(a). The Cost Cap described in this section 5.1(b) applies only to the activities listed in section 5.1(a), and not to other work required of Cal Water by this Consent Decree.

(3) Until the actions listed in Section 5.1(a) have been completed, Cal Water shall provide monthly statements to DTSC tracking the costs incurred to date for the labor and capital improvements subject to the cap.

(4) Cal Water shall maintain accurate books and records such that the costs incurred by Cal Water in undertaking the actions listed in Section 5.1(a) can be ascertained. Such books and records shall be maintained at the General Office of Cal Water and shall be available for inspection and copying by DTSC during the normal business day upon ten (10)



1 working days written notice, except as to the year end close. Copying shall be at expense of  
2 DTSC.

3 (5) For up to one year after the actions listed in Section 5.1(a) have  
4 been completed, DTSC shall have the right at its own expense to have Cal Water's books and  
5 records audited by an independent accounting firm or representative, and Cal Water agrees to  
6 cooperate fully with DTSC in any such audit. DTSC shall provide Cal Water forty-five (45)  
7 calendar days advance notice of an audit and shall not request an audit during the year end close.  
8 DTSC shall also have the right to access records submitted by Cal Water to the California  
9 Public Utilities Commission ("CPUC") in connection with its reasonableness review of the costs  
10 for the subject capital improvements in the applicable general rate case for the Chico District.

11 (c) Cal Water, in its discretion, shall initially determine if actions to be  
12 undertaken pursuant to Section 5.1(a) are to be bid competitively, sole source, or otherwise, or  
13 are to be performed by Cal Water employees, subject to DTSC's right to review potential  
14 contract awards, described below. Cal Water is not subject to any public works bidding or  
15 contract laws by virtue of this Consent Decree.

16 (1) Cal Water shall review any bids and make recommendations to  
17 DTSC for the award of contracts to perform the work specified in Section 5.1(a).

18 (2) If, after completion of the design phase of the work to be  
19 undertaken pursuant to Section 5.1(a), Cal Water receives any costs estimates for the remaining  
20 actions required by Section 5.1(a), Cal Water will inform DTSC of the dollar amount of such  
21 estimates.

22 (3) DTSC is entitled to reject a contract award recommended by Cal  
23 Water if performance of that contract would cause the total cost of the actions to be undertaken  
24 pursuant to Section 5.1(a) by Cal Water to exceed the cost cap described in Section 5.1(b).

25 (A) In the event that DTSC rejects a contract award  
26 recommendation, DTSC and Cal Water shall meet and confer to determine whether the work  
27 proposed in the contract should be solicited again or performed in some other manner.



1 (B) DTSC's approval of a contract award shall not be  
2 unreasonably withheld. DTSC shall have ten (10) calendar days from receipt to approve or deny  
3 a Cal Water contract award recommendation. DTSC shall consult with Cal Water prior to the  
4 denial of any contract award. Unless DTSC does not approve or otherwise denies a Cal Water  
5 contract award recommendation within ten (10) calendar days from receipt of Cal Water's  
6 recommendation, Cal Water will deem its contract award recommendation approved and proceed  
7 with awarding the contract.

8 (d) [RESERVED]

9 (e) Cal Water shall not have title to nor ownership interest in the two wells  
10 known as Future Well A and Future Well B, any new monitoring wells, nor any wells  
11 constructed to replace these wells. Cal Water shall have title to and ownership of the capital  
12 improvements installed at its expense and shall retain ownership of CWS-46.

13 (f) Except as to CWS-46, Cal Water shall not be responsible for the payment  
14 of real property taxes or pump taxes for the Future Treatment System. Except as to CWS-46,  
15 Cal Water shall not be required to maintain insurance for the Future Treatment System.

16 (g) DTSC will give Cal Water the opportunity to review any bids received by  
17 DTSC for the construction of any of the Future Remedial Extraction Wells. Cal Water will  
18 consult with DTSC on design of Future Remedial Extraction Wells and any equipment needed  
19 to be installed on the Future Treatment System.

20 5.2 Acceptance of Treated Water from the Future Treatment System.

21 (a) Cal Water will accept into its distribution system and deliver to its  
22 customers the water treated by the Future Treatment System at its expense for 30 years from the  
23 date that this Consent Decree is approved by the Court or for as long as DTSC determines that  
24 the Future Treatment System should continue to operate, whichever is shorter. The quantity of  
25 water anticipated but not guaranteed to be produced by the Future Treatment System is 100  
26 gallons per minute, depending upon system conditions and maintenance. However, Cal Water  
27 shall be relieved of this requirement for any period of time during which a regulatory agency of  
28 the State or federal government does not permit Cal Water to provide the treated pumped water



1 (alone or blended with other water) to its domestic water customers, provided that such  
2 prohibition is not a result of Cal Water's failure, without substantial justification, to comply  
3 with a permit issued to it.

4 (b) Cal Water will use its best efforts to continuously (24 hours per day)  
5 pump the Future Remedial Extraction Wells and CWS-46 at the rates specified in the Remedial  
6 Action Plan. Cal Water will manage its pumping and distribution of water in order to give  
7 priority to continuous pumping of the Future Remedial Extraction Wells, CWS-46, and the  
8 Central Plume Wells over all other Cal Water wells in Chico such that Cal Water will stop  
9 pumping other Cal Water wells in Chico so that the specified wells can continue to pump  
10 without exceeding the pressure limits of the distribution system. These pumping requirements  
11 are subject to the following:

12 (1) Cal Water will be allowed to shut down wells in case of  
13 emergency or when necessary to perform routine maintenance, inspections, and repairs.

14 (2) Cal Water may pump any Cal Water wells in Chico in  
15 contravention of the priority established in section 5.2(b) if such pumping is needed to maintain  
16 system pressure to meet customer demand or regulatory requirements.

17 (3) [RESERVED]

18 (4) No more than once per year, DTSC will inform Cal Water in  
19 writing of the pumping priority among each of the Future Remedial Extraction Wells, CWS-46,  
20 and the Central Plume Wells. If at any time water distribution system pressure limits do not  
21 allow the Future Remedial Extraction Wells, CWS-46, and the Central Plume Wells to all be  
22 pumped simultaneously, Cal Water may stop pumping one or more of these wells in the priority  
23 order specified by DTSC until such time as system pressure allows one or more of these wells to  
24 resume pumping.

25 (c) DTSC, at its expense, shall equip each of the Future Remedial Extraction  
26 Wells with a chart recorder that will record flow rate and water system pressure. DTSC, at its  
27 expense, shall equip the Future Remedial Extraction Wells with a totalizing flow meter. Cal  
28



1 Water shall report to DTSC each month the monthly total output of each of the Future Remedial  
2 Extraction Wells and CWS-46.

3 (d) Under no circumstances is Cal Water required to manage the treated  
4 water at its expense in a manner other than by delivering water to its customers.

5 (e) Cal Water is not required to pay any user fees for the acceptance of the  
6 treated water from the Future Remedial Extraction Wells during the time that it is providing at  
7 its own expense the services described in section 5.3.

8 (f) Cal Water shall use its best efforts to obtain from DHS or any other  
9 applicable regulatory agency a permit allowing it to deliver the treated water from the Future  
10 Treatment System to its customers. These efforts shall include collecting and providing  
11 necessary data, preparing application documents, supplying maps and diagrams, responding to  
12 inquiries from regulators, and implementing at its expense the 12-step process set forth in the  
13 DHS letter of February 17, 2006, to Cal Water. (The letter and DHS's "Policy Memo 97-005  
14 Policy Guidance for Direct Domestic Use of Extremely Impaired Sources" are attached hereto  
15 as Exhibit G.) Cal Water shall not be responsible for the costs, including attorney's fees and  
16 engineering or environmental consultant's fees, associated with the preparation and approval of  
17 an environmental impact report (EIR), if required for the Future Treatment System and/or the  
18 Future Remedial Extraction Wells.

19 (1) Denial or revocation of a permit by DHS or any other applicable  
20 regulatory agency that results in the inability of Cal Water to legally provide the treated water to  
21 its domestic water customers shall not constitute a violation of this Consent Decree, unless the  
22 denial or revocation is due to Cal Water's failure, without substantial justification, to comply  
23 with the procedural requirements of or requests for information from the regulatory agency. Cal  
24 Water shall have a reasonable opportunity to cure said denial or revocation after written notice  
25 thereof before it is deemed a violation of this Consent Decree.

26 (g) Cal Water shall remain in compliance with all applicable statutes,  
27 regulations, and permits, including permits issued by DHS, which allow it to deliver treated  
28 water from the Future Treatment System to its domestic water customers.



1           5.3     Ongoing Operations and Maintenance of the Future Treatment System.

2           Starting on the Effective Date and ending on the day 30 years subsequent thereto, or  
3 when DTSC has determined that the remediation is complete, whichever is earlier, Cal Water  
4 will, at its expense, perform the work specified below to operate and maintain the Future  
5 Treatment System, Future Remedial Extraction Wells, and associated equipment and pipelines:

6                   (a)     Pump the Future Remedial Extraction Wells as described in section 5.2.

7 Costs to be borne by Cal Water are as follows:

8                   (1)     Power used to pump the Future Remedial Extraction Wells and  
9 operate the Future Treatment System;

10                   (a)     However, if the Remedial Action Plan requires the  
11 Future Remedial Extraction Wells to be pumped at a rate significantly in excess of 100  
12 gallons per minute, Cal Water shall only be required to bear the cost of power that would be  
13 needed to pump the Future Remedial Extraction Wells at 100 gallons per minute.

14                   (2)     Other utilities, such as telephone, necessary for the operation of the  
15 Future Remedial Extraction Wells and Future Treatment System;

16                   (b)     Cal Water shall maintain the Future Remedial Extraction Wells.  
17 Maintenance includes leak repair, adjustment and repair of pump lubrication equipment and flow  
18 meter equipment, chart replacement, site inspection, and other maintenance necessary for operation  
19 of pumps, motors, and electrical equipment, as Cal Water determines is needed.

20                   (1)     Cal Water shall not be responsible for the cost of replacement parts  
21 for the Future Remedial Extraction Wells, provided that the need to replace said parts is from  
22 causes beyond the reasonable control of Cal Water, due to normal wear and tear, or end of expected  
23 useful life.

24                   (2)     Cal Water shall not be responsible for the cost of disposing of raw  
25 water from the Future Remedial Extraction Wells that cannot be conveyed to its distribution  
26 system.

27                   (c)     Cal Water shall perform maintenance of the Future Treatment System.  
28 Maintenance includes leak repair, adjustment and repair of equipment, chart replacement, site



1 inspection, pre-filter replacement, coordination and supervision of replacement of carbon filter  
2 media, and other maintenance necessary for operation of the Future Treatment System, as Cal Water  
3 determines is needed.

4 (1) Cal Water shall not be responsible for the cost of replacement parts  
5 for the Future Treatment System, provided that the need to replace said parts is from causes beyond  
6 the reasonable control of Cal Water, due to normal wear and tear, or end of expected useful life. If  
7 the selected treatment technology changes, Cal Water likewise shall not be responsible for costs of  
8 replacements parts for the new technology.

9 (2) After it provides the initial supply of carbon filter media for the  
10 Future Treatment System, Cal Water shall not be responsible for the cost of carbon filter media used  
11 to treat water passing through the Future Treatment System. Cal Water shall not be responsible for  
12 the cost of carbon filter media after the initial supply of said media..

13 (d) Cal Water shall apply for and obtain any permits or permit amendments or  
14 renewals necessary for the continued operation of the Future Treatment System and Future  
15 Remedial Extraction Wells, including paying any permitting or regulatory fees necessary for the  
16 legal operation of the Future Treatment System and Future Remedial Extraction Wells. Cal Water  
17 shall not be responsible for the costs, including attorney's fees and engineering or environmental  
18 consultant's fees, associated with the preparation and approval of an environmental impact report  
19 (EIR), if required for the Future Treatment System and/or the Future Remedial Extraction Wells.  
20 Cal Water also shall not be responsible for the costs, including attorney's fees and environmental  
21 consultant's fees, for any agency approvals or permits required for a creek crossing or streambed  
22 alteration associated with the Future Treatment System and/or the Future Remedial Extraction  
23 Wells, including, but not limited to, approvals or permits needed from the California Department of  
24 Fish and Game or the National Oceanic and Atmospheric Administration.

25 (e) Cal Water shall remain in compliance with all applicable statutes,  
26 regulations, and permits, including permits issued by DHS, with respect to the work to be  
27 performed pursuant to Section 5.3.

28 (f) Cal Water will perform at its expense sampling and analysis, using method



1 EPA standard 8260B or equivalent, once per month, or similar sampling as need to meet DHS  
2 monitoring requirements, of water extracted and treated as part of the Potential Remedy, and report  
3 those results to DTSC on a monthly basis. Changes to the monitoring protocols may be made with  
4 the prior written approval of DTSC. The water to be sampled is as follows:

5 (1) Water that has been treated by one of the granular activated carbon  
6 units at the Future Treatment System prior to entry of that water into the second granular activated  
7 carbon unit at the Future Treatment System;

8 (2) Treated water that exits the Future Treatment System after passing  
9 through both granular activated carbon units;

10 (3) Raw, untreated water extracted from each of the two Future  
11 Remedial Extraction Wells.

12 (g) Cal Water will perform at its expense any sampling and analysis of water at  
13 the time carbon in the Future Treatment System is changed or replaced, if such sampling and  
14 analysis is required by DHS or other governmental agency regulating drinking water. In addition,  
15 Cal Water will perform Title 22 Sampling and the annual water monitoring analyses required by  
16 DHS.

17 (h) Cal Water is not responsible for the cost of any sampling or analysis of  
18 groundwater monitoring wells, including, but not limited to, well purging, sample collection,  
19 analytical costs, data analysis, hazardous waste disposal fees, or temporary storage.

20 (i) Cal Water shall make reasonable efforts to obtain access to the Future  
21 Remedial Extraction Wells and Future Treatment System and associated equipment and pipelines  
22 necessary to carry out the activities described in this section 5.3. Consideration, payments, costs or  
23 expenses, including attorney's fees, related to the acquisition of real property, eminent domain,  
24 licenses, leases, easements, construction easements, rights of entry or access rights shall not be  
25 borne by Cal Water.

26 (j) If it becomes technically infeasible for Cal Water to operate the Future  
27 Remedial Extraction Wells solely with granular activated carbon absorption because contaminants  
28



1 other than PCE are detected in the well and/or because the allowable technology changes, Cal  
2 Water shall not be responsible for the costs of any new or added treatment technology.

3 (k) If Cal Water is unable to legally accept into its distribution system and  
4 deliver to its customers the water treated by the Future Treatment System as a result of the failure of  
5 DTSC or any other party to replace the carbon filter media used by the Future Treatment System,  
6 Cal Water shall not be required to comply with sections 5.2(a), 5.2(b) (with respect only to the  
7 Future Treatment System), 5.2(f), 5.3(a), 5.3(c), and 5.3(d) of this Consent Decree until the carbon  
8 filter media has been replaced and Cal Water is legally able to accept the water into its distribution  
9 system and deliver the water to its customers.

10 5.4 Operation of Well CWS-46.

11 Cal Water shall operate at its expense CWS-46 for 30 years or until DTSC has determined  
12 that the clean-up performance goals specified in the Remedial Action Plan have been achieved,  
13 whichever is earlier.

14 (a) In operating the well Cal Water will perform, at its expense, the following  
15 activities:

16 (1) Pump CWS-46. Subject to the limitations described in section  
17 5.2(b), Cal Water shall pump well CWS-46 as near to continuously as possible.

18 (2) Accept into its distribution system and deliver to its customers the  
19 pumped water at its expense. Cal Water shall be relieved of this requirement for any period of  
20 time during which a regulatory agency of the State or federal government prohibits Cal Water  
21 from providing the pumped water to its domestic water customers, provided that such prohibition is  
22 not a result of Cal Water's failure, without substantial justification, to comply with a permit  
23 issued to it or failure to use available cost-effective technology to remove contaminants from the  
24 water pumped by the well.

25 (3) Monitor water extracted from well CWS-46 by collecting influent  
26 and effluent samples each month, analyzing them for volatile organic compounds, and reporting  
27 the results of such analyses to DTSC monthly. Changes to the monitoring protocols may be  
28 made with the prior written approval of DTSC.



1 (4) Apply for and obtain any permits, permit amendments or renewals  
2 necessary for the continued operation of well CWS-46, including paying any permitting or  
3 regulatory fees necessary for the legal operation of this well, and remain in compliance with all  
4 applicable regulations and permits, including permits issued by DHS, with respect to the work to  
5 be performed pursuant to this Section 5.4.

6 (A) Denial or revocation of a permit by DHS or any other  
7 applicable regulatory agency that results in the inability of Cal Water to legally provide the  
8 treated water from CWS-46 to its domestic water customers shall constitute a violation of this  
9 Consent Decree, if and only if the denial or revocation is due to Cal Water's failure, without  
10 substantial justification, to comply with the procedural requirements of or requests for  
11 information from the regulatory agency. Cal Water shall have a reasonable opportunity to cure  
12 said denial or revocation after written notice thereof before it is deemed a violation of this  
13 Consent Decree.

14 (5) Perform maintenance of wells CWS-46 and associated equipment  
15 and pipelines, including providing and installing replacement parts and replacing carbon or other  
16 water treatment media.

17 (b) If Cal Water determines that it is technically infeasible to operate CWS-46  
18 due to the physical condition of the well boring or casing or due to geological conditions, the  
19 following procedures shall apply:

20 (1) Cal Water shall meet and confer with DTSC about the condition of  
21 the well, potential remedies to correct the condition causing the technical infeasibility, and whether  
22 operation of the well is needed to achieve the goals of the Remedial Action Plan.

23 (2) If DTSC determines that operation of the well is still needed to  
24 achieve the goals of the Remedial Action Plan, then DTSC may choose one or more of the following  
25 actions:

26 (A) Cal Water will rehabilitate the well at its own expense if  
27 rehabilitation is technically reasonable.  
28



1 (B) Cal Water will install a replacement well at its own expense  
2 to take the place of the well to be taken out of service if the replacement well can be installed on the  
3 same piece of property as the well to be taken out of service.

4 (C) Cal Water will install a replacement well at its own expense  
5 to take the place of the well to be taken out of service on a parcel of land obtained by DTSC if the  
6 replacement well cannot be installed on the same piece of property as the well to be taken out of  
7 service.

8 (3) Cal Water is not obligated by this Consent Decree to acquire any real  
9 property, by payment of consideration or through the exercise of eminent domain, for the purpose of  
10 installing a well to replace CWS-46. Cal Water is not obligated by this Consent Decree to re-install  
11 a well more than one time nor to rehabilitate a well more than one time.

12 (c) If it becomes technically infeasible for Cal Water to operate CWS-46 solely  
13 with granular activated carbon absorption because contaminants other than PCE are detected in the  
14 well and/or because the allowable treatment technology changes, the following procedures shall  
15 apply:

16 (1) Cal Water shall meet and confer with DTSC about the contaminant  
17 levels in the well, potential treatment technologies, and whether operation of the well is needed to  
18 achieve the goals of the Remedial Action Plan.

19 (2) If DTSC determines that operation of the well is still needed to  
20 achieve the goals of the Remedial Action Plan, then DTSC has the option of providing additional  
21 treatment technology for the well, at no expense to Cal Water, such that the well can continue to  
22 operate legally. The provision of additional treatment technology by DTSC does not relieve Cal  
23 Water of its obligations to operate any granular activated carbon absorption treatment system at well  
24 CWS-46, unless such operation would be superfluous or technically unsound.

25 (3) If neither DTSC nor Cal Water chooses to provide new treatment  
26 technology for the well, then the procedure in section 5.4(e) shall apply.

27 (d) Cal Water shall operate any well installed to replace CWS-46 according to  
28 terms of this Consent Decree applicable to the original well.



1 (e) If for any reason CWS-46 becomes permanently inoperable, Cal Water shall  
2 immediately decommission the well pursuant to a work plan submitted to and approved by DTSC.  
3 Notwithstanding the foregoing, Cal Water may take CWS-46 off-line for repairs, rehabilitation,  
4 maintenance, peaking or due to system conditions described in section 5.2(b).

5 (f) Other than as specified in this section 5.4, nothing in this Consent Decree  
6 obligates DTSC to pay for or reimburse Cal Water for the activities listed in section 5.4.

7 5.5 Cal Water shall conduct all activities required by this Consent Decree in  
8 compliance with all applicable state, local and federal requirements including, but not limited to,  
9 requirements to obtain permits and to assure worker safety as set forth above. Cal Water shall  
10 also comply with all applicable or relevant and appropriate requirements of all Federal and state  
11 environmental laws to be set forth in Remedial Action Plan. The activities conducted by Cal  
12 Water pursuant to this Consent Decree, if consistent with a Remedial Action Plan approved by  
13 DTSC, shall be considered to be consistent with California Health and Safety Code section  
14 25356.1.5.

15 5.6 If the Remedial Action Plan states that activities being performed or to be  
16 performed by Cal Water pursuant to any portions of section 5 are inconsistent with the selected  
17 remedy for the Southwest Chico Plume, then Cal Water shall not be required by this Consent  
18 Decree to perform those activities that the Remedial Action Plan explicitly identifies and states  
19 are inconsistent with the remedy selected by the Remedial Action Plan.

20 5.7 The conveyance by Cal Water of any interest in property, including but not  
21 limited to pipelines, pumping equipment, or treatment facilities, shall not release or  
22 otherwise affect Cal Water's responsibilities to perform the work specified in section 5,  
23 except that:

24 (a) If at any time Cal Water is no longer the public water purveyor for the  
25 city of Chico, Cal Water may arrange with the successor water purveyor for the city of  
26 Chico, or, subject to DTSC approval, with another entity of its choosing, to complete the  
27 obligations of Cal Water to perform work under the terms of this Consent Decree; and  
28



1 (b) If, as a result of an exercise of eminent domain by a public entity, Cal  
2 Water property necessary for complying with the terms of this Consent Decree, including but  
3 not limited to pipelines, pumping equipment, or treatment facilities, is condemned and no  
4 longer in Cal Water's possession, then Cal Water's responsibilities, if any, to perform the  
5 work specified in section 5 will be based on applicable eminent domain law at the time of  
6 condemnation.

7 5.8 Unless otherwise specified, nothing in this Consent Decree obligates DTSC to  
8 pay for or reimburse Cal Water for any of the activities listed in section 5. Nothing in this  
9 Consent Decree prohibits or in any way limits Cal Water from seeking and obtaining  
10 reimbursement for any of the activities listed in section 5, except from DTSC.

11 5.9 If requested by Cal Water with reasonable notice, DTSC will provide information  
12 or testimony to the California Public Utilities Commission to explain the nature and necessity of  
13 the work being performed by Cal Water pursuant to this Consent Decree.

14 5.10 Cal Water shall not be held liable or deemed to have breached this Consent  
15 Decree for failure or delay caused by or resulting from causes beyond its reasonable control,  
16 including, but not limited to, fire, floods or other extreme weather conditions, earthquakes, acts  
17 of terrorism, acts of war, civil disturbances, acts of God, labor disturbances, embargoes, or  
18 delays in acting by any governmental authority.

19 (a) Cal Water shall not be held responsible for removing such failures or  
20 delays unless:

21 (1) The failures or delays result from causes within Cal Water's  
22 control; or

23 (2) The failures or delays affect property owned by Cal Water, but  
24 only to the extent the failures or delays affect such property.

25 (b) This paragraph is intended only to suspend and not discharge obligations  
26 under this Consent Decree. When the causes of the failure or delay are removed, performance  
27 shall resume by Cal Water.



1           5.11    Within 10 days of the effective date of this Consent Decree, Cal Water and DTSC  
2 shall each designate an individual to serve as a contact and liaison for the work described in  
3 section 5.

4       **6.       GOVERNMENT LIABILITIES**

5           Neither DTSC nor any other department or agency of the State of California shall be  
6 liable for any injuries or damages to persons or property resulting from acts or omissions by Cal  
7 Water in carrying out activities pursuant to this Consent Decree. Neither DTSC nor any other  
8 department or agency of the State of California shall be held as a party to any contract entered  
9 into by Cal Water or its agents in carrying out activities pursuant to this Consent Decree unless  
10 the contract is entered into in writing by DTSC or such other department or agency of the State  
11 of California.

12       **7.       COVENANT NOT TO SUE BY DTSC**

13           7.1    Except as specifically provided in sections 7.2 and 8, below, and except as may be  
14 necessary to enforce the terms of this Consent Decree, as of the date this Consent Decree is  
15 entered as a consent decree of the Court, DTSC covenants not to sue Cal Water for “Matters  
16 Addressed” by this Consent Decree. “Matters Addressed” includes any and all civil liability for  
17 reimbursement of all or any portion of DTSC’s Response Costs, past or future, declaratory relief,  
18 injunctive relief or any other relief under CERCLA, the Carpenter-Presley-Tanner Hazardous  
19 Substance Account Act, California Health & Safety Code §§ 25300 et seq., or any other  
20 applicable federal or state statutory or common law for liability for Response Costs and/or  
21 response actions, with regard to releases or threatened releases of perchloroethylene (including  
22 its breakdown products) at, in, or from the Southwest Chico Plume, as set forth in the Complaint.

23           7.2    “Matters Addressed” shall not include, and the covenant not to sue set forth in  
24 section 7.1 above does not pertain to, any matters other than those expressly specified in section  
25 7.1. DTSC reserves, and this Consent Decree is without prejudice to, all rights, claims and  
26 causes of action DTSC may have against Cal Water with respect to all other matters, including  
27 releases or threatened releases of hazardous substances in the city of Chico other than releases or  
28



1 threatened releases of perchloroethylene (including its breakdown products) at, in, or from the  
2 Southwest Chico Plume.

3         7.3     DTSC further covenants not to sue Cal Water for reimbursement of all or any  
4 portion of DTSC's Response Costs, past or future, declaratory relief, injunctive relief or any  
5 other relief under CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act,  
6 California Health & Safety Code §§ 25300 et seq., or any other applicable federal or state  
7 statutory or common law for liability for Response Costs and/or response actions with respect to  
8 work being performed by Cal Water in compliance with this Consent Decree, including but not  
9 limited to the pumping or not pumping of well CWS-46 (or another well that replaces said well)  
10 done in compliance with this Consent Decree.

11 **8.     RESERVATION OF RIGHTS**

12         8.1     The Covenant Not to Sue set forth in section 7.1 above does not pertain to the  
13 following matters, which DTSC reserves, and this Consent Decree is without prejudice to all  
14 rights and claims of DTSC against Cal Water with respect to the following:

15                 (a)     material failure of Cal Water to meet the requirements of this Consent  
16 Decree;

17                 (b)     damage to natural resources, as defined in Section 101(6) of CERCLA, 42  
18 U.S.C. section 9601(6), including all costs incurred by any natural resources trustees; and

19                 (c)     criminal liability.

20         8.2     Except as expressly provided in this Consent Decree, nothing in this Consent  
21 Decree is intended nor shall it be construed to preclude DTSC from exercising its authority  
22 under any law, statute or regulation. Furthermore, nothing in this Consent Decree is intended,  
23 nor shall it be construed, to preclude any other state agency, department, board or entity or any  
24 federal entity from exercising its authority under any law, statute or regulation.

25 **9.     COVENANT NOT TO SUE BY CAL WATER**

26         9.1     Cal Water covenants not to sue, and agrees not to assert any claims or causes of  
27 action against, DTSC, or its contractors or employees, for any costs or damages Cal Water might  
28 incur or for any injuries or losses Cal Water might suffer as a result of its performance of the



requirements of this Consent Decree.

9.2 Cal Water further covenants not to sue, and agrees not to assert any claims or causes of action (including those previously identified in any counterclaims filed by Cal Water) under CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code §§ 25300 et seq., or any other applicable federal or state statutory or common law, against, DTSC or its contractors or employees, arising from any costs Cal Water has incurred, or may incur in the future, conducting removal or remedial activities, including operation and maintenance activities, at and for the Southwest Chico Plume.

9.3 Nothing in this section 9 prohibits Cal Water from taking such action as is necessary to enforce the provisions, terms, or conditions of this Consent Decree.

## **10. EFFECT OF CONSENT DECREE**

10.1 This Consent Decree constitutes the resolution of Cal Water's liability to DTSC with respect to the Matters Addressed in a judicially approved settlement within the meaning of section 113(f)(2) of CERCLA, 42 U.S.C. section 9613(f)(2). This Consent Decree requires Cal Water to perform various activities in connection with the remediation of the hazardous substances released at, in, or from the Southwest Chico Plume.

10.2 Accordingly, upon entry of this Consent Decree as a consent decree of the Court, and provided that Cal Water performs all of its obligations under this Consent Decree, Cal Water shall be entitled, as of the Effective Date, to protection against all claims for contribution, pursuant to section 113(f)(2) of CERCLA, 42 U.S.C. section 9613(f)(2), for the Matters Addressed by this Consent Decree (as described in section 7), to the fullest extent permitted by law, and by entering this Consent Decree this Court makes a determination pursuant to California Code of Civil Procedure section 877.6 that the settlement was made in good faith and shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor (Cal Water) for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

10.3 Except as specifically provided in this Consent Decree, nothing in this Consent Decree is intended, nor shall be construed, to waive, release, or otherwise affect any right, claim,



1 or cause of action held by any party to this Consent Decree against, or to provide a covenant not  
2 to sue to, any third person not a party to this Consent Decree, or to in any way limit, restrict, or  
3 impair the right of any party to this Consent Decree to assert rights, claims, causes of actions,  
4 and defenses against any third person not a party to this Consent Decree, including without  
5 limitation, the right to seek payment, reimbursement, contribution, or indemnity from such  
6 persons for obligations incurred or to be incurred, or actions taken or to be taken, under this  
7 Consent Decree. Except as specifically provided in this Consent Decree, DTSC and Cal Water  
8 expressly reserve any rights, claims, or causes of actions they might have against any third  
9 person not a party to this Consent Decree.

10 10.4 This Consent Decree is contingent and dependent on all of its terms being  
11 approved and ordered by the Court. If the Court does not approve and order this Consent  
12 Decree, DTSC and Cal Water reserve all of their respective rights, remedies, and defenses.

13 10.5 This Consent Decree is not intended, nor shall it be construed, to limit or  
14 otherwise affect DTSC's right to select a remedial action for the Southwest Chico Plume that is  
15 different from or inconsistent with the Potential Remedy.

16 10.6 By agreeing to the terms of this Consent Decree, including but not limited to the  
17 statement of work to be performed by Cal Water, Cal Water does not warrant, promise, represent  
18 or guarantee that any of the actions taken by Cal Water will remediate or have any effect upon  
19 contamination in the Southwest Chico Plume.

20 10.7 Nothing in this Consent Decree obligates DTSC to perform, implement, or pay  
21 for any work specified in the Remedial Action Plan or included in the definition of the Potential  
22 Remedy, to clean up or remediate contaminated groundwater, or to provide treated or  
23 uncontaminated water to Cal Water. This Consent Decree does not create a cause of action  
24 against DTSC for any failure by DTSC to perform, implement, or pay for any work specified in  
25 the Remedial Action Plan or included in the definition of the Potential Remedy, to clean up or  
26 remediate contaminated groundwater, or to provide treated or uncontaminated water to Cal  
27 Water.

28 **11. RETENTION OF RECORDS**



1           11.1 Cal Water shall provide to DTSC, upon request, copies of all documents and  
2 information within its possession or control or that of their contractors or agents relating to the  
3 implementation of this Consent Decree, including, but not limited to design specifications,  
4 reports of construction activities, contracts, invoices, sampling, analysis, chain of custody  
5 records, manifests, trucking logs, receipts, reports, sample traffic routing, and correspondence.  
6 Such records shall be preserved by Cal Water until 10 years after the entry of this Consent  
7 Decree, or 10 years after creation of a record or document, whichever is later.

8           11.2 Cal Water may assert that certain documents, records, and other information  
9 requested by DTSC under section 11.1 are privileged under the attorney-client privilege or any  
10 other privilege recognized by law. If Cal Water asserts such a privilege, it shall provide DTSC  
11 with the following: (1) the title of the document, record, or information; (2) the date of the  
12 document, record, or information; (3) the name and title of the author of the document, record, or  
13 information; (4) the name and title of each addressee and recipient of the document, record, or  
14 information; (5) a description of the subject of the document, record, or information; and (6) the  
15 privilege asserted by Cal Water. However, no documents, records, or other information created  
16 or generated pursuant to the requirements of the Consent Decree shall be withheld on the  
17 grounds that they are privileged. If a claim of privilege applies only to a portion of a document,  
18 the document shall be provided to DTSC in redacted form to mask the privileged information  
19 only. Cal Water shall retain all records and documents it claims to be privileged until DTSC has  
20 had a reasonable opportunity to dispute the privilege claim and any such dispute has been  
21 resolved in Cal Water's favor.

22           11.3 DTSC shall retain records relating to the implementation of this Consent Decree  
23 in accordance with the requirements of the State Records Management Act (California  
24 Government Code, §§ 14740-14774) and related implementing regulations and policies. DTSC  
25 shall make such records available to Cal Water upon request in accordance with the terms of the  
26 California Public Records Act (California Government Code, §§ 6250 et seq.).

27 **12. NOTIFICATION**

28           12.1. Notification to or communication between the parties to this Consent Decree as



1 required or provided for in this Consent Decree shall be addressed as follows (except that  
2 monitoring data required to be sent to DTSC pursuant to section 5 shall be sent only to  
3 Mr. Tjosvold):

4 As to DTSC:

5 James Tjosvold  
6 Chief, Northern California Central Cleanup Operations Branch  
7 Department of Toxic Substances Control  
8 8800 Cal Center Drive  
9 Sacramento, CA 95826-3200  
10 Attn: Donald Mandel, Project Manager for Southwest Chico Plume  
11 facsimile: (916) 255-3696

12 Judith Tracy, Esq.  
13 Office of Legal Counsel  
14 Department of Toxic Substances Control  
15 1001 "I" Street  
16 P.O. Box 806  
17 Sacramento, CA 95812  
18 facsimile: (916) 323-5542

19 Timothy E. Sullivan, Esq.  
20 Deputy Attorney General  
21 California Department of Justice  
22 1515 Clay Street, 20th Floor  
23 P.O. Box 70550  
24 Oakland, CA 94612-0550  
25 facsimile: (510) 622-2270

26 As to Cal Water:

27 Lynne McGhee  
28 Corporate Counsel  
29 California Water Service Company, Inc.  
30 1720 North First Street  
31 San Jose, CA. 95112-4598  
32 facsimile:

33 Patrick D. Riddle  
34 Paul D. Sheldon  
35 Law Offices of Patrick D. Riddle  
36 1811 Grand Canal Blvd., Suite 2  
37 Stockton, CA 95207  
38 facsimile: (209) 367-6997

39 12.2. Upon 10 days notice to the other party, a party to this Consent Decree may  
40 substitute another person for an addressee named above to receive notifications or  
41 communications as required or provided for in this Consent Decree.

42 **13. MODIFICATION OF SETTLEMENT AGREEMENT AND CONSENT DECREE**



1 This Consent Decree may only be modified upon the written agreement of DTSC and Cal  
2 Water and the approval of the Court, or upon order of the Court after noticed motion by a party  
3 to this Consent Decree.

4 **14. APPLICATION OF CONSENT DECREE**

5 This Consent Decree shall apply to and be binding upon DTSC, Cal Water, and each of  
6 their respective successors and assigns. The provisions of this Consent Decree shall inure to the  
7 benefit of DTSC, Cal Water, and each of their respective successors and assigns. The provisions  
8 of this Consent Decree shall also inure to the benefit of the officers, directors, employees and  
9 agents, attorneys, and affiliates of Cal Water, in their capacities as such, and to Cal Water's  
10 parent and subsidiary companies, including but not limited to California Water Service Group.

11 **15. AUTHORITY TO ENTER**

12 Each signatory to this Consent Decree certifies that he or she is fully authorized by the  
13 party he or she represents to enter into this Consent Decree, to execute it on behalf of the party  
14 represented, and legally to bind that party.

15 **16. INTEGRATION**

16 This Consent Decree, including the exhibits and other materials incorporated herein by  
17 reference, constitutes the entire agreement between DTSC and Cal Water and may not be  
18 amended or supplemented except as provided for in this Consent Decree.

19 **17. RETENTION OF JURISDICTION**

20 The Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of  
21 this Consent Decree.

22 **18. EXECUTION OF DECREE**

23 This Consent Decree may be executed in two or more counterparts, each of which shall  
24 be deemed an original, but all of which together shall constitute one and the same instrument.

25 **19. INTERPRETATION**

26 California law governs the interpretation of this Consent Decree. This Consent Decree  
27 shall be deemed to have been drafted equally by all parties hereto.

28 **20. DISPUTE RESOLUTION**



1           20.1   The dispute resolution process described in this section is limited to disputes  
2 relating to the scope, nature, or duration of work to be performed by Cal Water or DTSC  
3 pursuant to the Consent Decree.

4           20.2   DTSC and Cal Water agree that they will make good faith efforts to informally  
5 resolve any disputes as to the scope, nature, or duration of work to be performed by Cal Water  
6 pursuant to the Consent Decree. Such efforts shall include written or oral communications  
7 between employees of Cal Water and DTSC to discuss the nature of the dispute and means of  
8 resolving the dispute.

9           20.3   If a dispute remains after informal attempts at resolution, DTSC or Cal Water may  
10 request to the other party in writing that the parties employ a mediator to help resolve the  
11 dispute. Mediation is not required by this Consent Decree and must be agreed upon by both  
12 parties. The role of the mediator will be solely to facilitate discussions and help the parties  
13 resolve the dispute on terms agreeable to both parties. The mediator will not have the power to  
14 issue rulings on the meaning of the Consent Decree nor to make decisions binding on the parties.  
15 DTSC and Cal Water will share equally in the cost of the mediation, and each party shall pay its  
16 own fees and costs. DTSC and Cal Water agree that the mediation described in this section shall  
17 be conducted by Martin Quinn, or by such other person as both parties agree upon.

18           20.4   Any dispute not resolved through the dispute resolution process described in this  
19 section may be raised to the U.S. District Court for the Eastern District of California for  
20 resolution.

21           20.5   Notwithstanding the invocation of the dispute resolution procedures set forth in  
22 this section, Cal Water shall continue to perform all of its obligations under this Consent Decree  
23 that are not substantially in dispute or at issue.

24 **21.   ATTORNEYS FEES AND COSTS**

25           As to each other, each party to this Consent Decree shall bear its own costs, attorneys'  
26 fees, expert witness fees, and all other costs of litigation. This paragraph shall have no effect on  
27 the parties' right to recover these fees or costs from any other party.

28 **22.   APPROVALS OF PARTIES**



1 Plaintiff DTSC consents to this Consent Decree by its authorized representative as  
2 follows:

3 CALIFORNIA DEPARTMENT OF  
4 TOXIC SUBSTANCES CONTROL

5 Dated: 7/3/07 /s/

6 James Tjosvold  
7 Chief, Northern California-Central Cleanup  
8 Operations Branch  
9 California Department of Toxic Substances Control

10 Cal Water consents to this Consent Decree by its authorized representative as follows:

11 CALIFORNIA WATER SERVICE COMPANY,  
12 INC.

13 Dated: \_\_\_\_\_ By:

14 Its:

15 APPROVED AS TO FORM:

16 DATED: 7/12/07

17 EDMUND G. BROWN JR.  
18 Attorney General of the State of California  
19 TOM GREENE  
20 Chief Assistant Attorney General  
21 THEODORA BERGER  
22 Senior Assistant Attorney General  
23 SALLY KNOX  
24 Supervising Deputy Attorney General  
25 CHRISTOPHER CROOK  
26 KIRK McINNIS  
27 Deputy Attorneys General

28 /s/  
TIMOTHY E. SULLIVAN  
Deputy Attorney General  
Attorneys for Plaintiff  
CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

29 DATED: 7/13/07

LAW OFFICES OF PATRICK D. RIDDLE


/s/



PAUL D. SHELDON  
Attorneys for Defendant  
CALIFORNIA WATER SERVICE COMPANY

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: August 14, 2007.

  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT